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Title 52. Waters of the State, Ports, and Watercraft

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Including Notes to the Georgia Reports
and the Georgia Appeals Reports

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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2013 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 29, 2013.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2013 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2013 supplement pamphlets and in the bound volumes of the Code.

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TITLE 52
WATERS OF THE STATE, PORTS, AND
WATERCRAFT

Chap.

1. General Provisions, 52-1-1 through 52-1-39.
7. Registration, Operation, and Sale of Watercraft, 52-7-1 through 52-7-77.

CHAPTER 1
GENERAL PROVISIONS

Article 1
Protection of Tidewaters

Article 2
Right of Passage

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52-1-3. Definitions.

Sec.
52-1-32. Definitions.

ARTICLE 1
PROTECTION OF TIDEWATERS

52-1-3. Definitions.

As used in this article, the term:

- (1) “Board” means the Board of Natural Resources.
- (2) “Commissioner” means the commissioner of natural resources.

(3) “Structure” means any structure located upon any tidewaters of this state, whether such structure is floating upon such tidewaters and is made fast by the use of lines, cables, anchors, or pilings, or any combination thereof, or is built upon pilings embedded in the beds of such tidewaters when such structure is being or has been used or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used as a means of transportation upon such tidewaters; and is not owned, occupied, or possessed pursuant to a permit issued by the commissioner pursuant to Code Section 52-1-10. Such structures may include, but are not limited to, vessels not being used in navigation; provided, however, that structures do not include live-aboards, as defined in Code Section 12-5-282. Structures shall also not include fishing camps, bait shops, restaurants, or other

commercial establishments permitted under Part 4 of Article 4 of Chapter 5 of Title 12, the “Coastal Marshlands Protection Act of 1970,” as amended, which do not discharge sewage into the waters of the state and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located.

(4) “Tidewaters” means the sea and all rivers and arms of the sea that are affected by the tide, where the tide rises and falls, which are capable of use for fishing, passage, navigation, commerce, or transportation, and which are located within the jurisdiction of the State of Georgia. (Code 1981, § 52-1-3, enacted by Ga. L. 1992, p. 2317, § 1; Ga. L. 1993, p. 91, § 52; Ga. L. 2012, p. 1074, § 4/SB 319.)

The 2012 amendment, effective July 1, 2012, substituted “live-aboards, as defined in Code Section 12-5-282” for “vessels which are capable of navigation and are tied up at marinas” in the second sentence of paragraph (3).

ARTICLE 2

RIGHT OF PASSAGE

52-1-32. Definitions.

As used in this article, the term:

- (1) “Board” means the Board of Natural Resources.
- (2) “Commissioner” means the commissioner of natural resources.
- (3) “Navigable stream or river” means a stream or river which is capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year.
- (4) “Structure” means any structure located upon any navigable stream or river of this state, whether such structure is floating upon such navigable stream or river and is made fast by the use of lines, cables, anchors, or pilings, or any combination thereof, or is built upon pilings embedded in the beds of such navigable stream or river when such structure is being, has been, or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used as a means of transportation upon such navigable stream or river; and is not owned, occupied, or possessed pursuant to a permit issued by the commissioner pursuant to Code Section 52-1-39. Such structures may include, but are not limited to, vessels not being used in navigation; provided, however, that structures do not include live-aboards, as defined in Code Section 12-5-282. Structures shall also not include fishing camps, bait shops, restaurants, or other commercial establishments permitted under Part 4 of Article 4 of Chapter 5 of Title 12,

the “Coastal Marshlands Protection Act of 1970,” as amended, which do not discharge sewage into the waters of the state and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located. (Code 1981, § 52-1-32, enacted by Ga. L. 1992, p. 2317, § 1; Ga. L. 1993, p. 91, § 52; Ga. L. 2012, p. 1074, § 5/SB 319.)

The 2012 amendment, effective July 1, 2012, substituted “live-aboards, as defined in Code Section 12-5-282” for “ves-

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ARTICLE 1

GENERAL PROVISIONS

52-7-5. Numbering of vessels; requirements; fees.

(a) The owner of each vessel required to be numbered by this article shall file an application for number with the department on forms containing such information required by the department. Upon receipt of the completed application and any other required information and documents, the department shall enter the application upon its records and issue to the applicant a certificate of number stating the number assigned to the vessel, the name and address of the owner, and such additional information as may be prescribed by the department.

(b)(1) The identification number assigned to all registered vessels, except those documented by the United States Coast Guard, shall be permanently painted or attached to each side of the forward half of the vessel, and no other number may be displayed thereon. Numbers shall read from left to right, be in block characters, be of a color contrasting with the background, and be not less than three inches in height nor more than one inch apart. There shall be a hyphen or space between the prefix letters and numerals and between the numerals and the suffix letters. The hyphen or space shall be equal to the width of any letter except I.

(2) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number shall be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number will be clearly visible under normal operating conditions.

(3) The numbers shall be maintained in a legible condition.

(4) Vessels owned by manufacturers or dealers and being used as demonstrators or for testing may use the dealer’s tag supplied with his or her registration in lieu of a permanently attached number.

(c) Expiration decals shall be assigned by the department to all registered vessels. Such decals shall be displayed one on each side of the

bow preceding the prefix letters and maintained in legible condition. There shall be a hyphen or space separating each decal and the prefix letters which shall be equal to the width of any letter except I.

(d) Applications shall be signed by the owner or owners of the vessel and shall be accompanied by the proper fee. Fees for numbering vessels for a registration period of three years shall be as follows:

(1) Vessels up to 16 feet in length	\$ 15.00
(2) Vessels 16 to 26 feet in length	36.00
(3) Vessels 26 to 40 feet in length	90.00
(4) Vessels 40 feet in length or longer	150.00

(e)(1) Registration for vessels shall expire on the last day of the month of the owner’s birth in the last year of the registration period and shall thereafter be of no force or effect unless renewed pursuant to this article; provided, however, that the registration for vessels not owned by individuals shall expire on December 31 of the last year of the registration period. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of such certificates.

(2) Registrations may be renewed any time after October 1 prior to the year of expiration. If the certificate of number is allowed to expire, a renewal application may still be filed with the department so long as the applicant pays the registration fee prescribed in subsection (d) of this Code section along with a \$10.00 late fee.

(3) Any application for renewal which, due to failure of the applicant to provide additional information required by the department, remains incomplete 60 days after initial receipt of such application shall expire and a new application and registration fee shall be required for renewal.

(f) Should the ownership of a numbered vessel change while a valid registration is in effect, the new owner shall file with the department a new application and pay the prescribed fee for a new registration. The number assigned upon transfer of ownership shall be identical to the previous number unless such number has been reassigned by the department during any expired registration period.

(g) In the event that an agency of the United States government shall have in force an overall system of identification (numbering) for vessels within the United States, the numbering system employed pursuant to this article by the department shall be in conformity therewith.

(h) The department may issue any certificate of number, expiration decal, marine toilet certification, or other permit provided for in this

chapter directly or may authorize any person to act as agent for the issuing thereof. In the event that a person accepts such authorization to issue certificates of number, he or she may be allotted a block of numbers and certificates therefor which, upon assignment and issue in conformity with this article and with any rules and regulations of the department, shall be valid as if assigned and issued directly by the department. Any person acting as agent for the department may charge a fee for his or her services in an amount approved by the department not to exceed \$10.00 per transaction.

(i) All records of the department made or kept pursuant to this Code section shall be public records.

(j) The owner shall furnish the department written notice of the transfer of all or of any part of his or her interest, other than the creation of a security interest, in a vessel numbered in this state pursuant to this Code section, the theft or recovery of the vessel, or the destruction or abandonment of the vessel within 15 days thereof.

(k) Any holder of a certificate of number shall notify the department in writing within 15 days if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department with his or her new address.

(l) No number other than the number validly assigned to a vessel shall be painted, attached, or otherwise displayed on either side of the forward half of the vessel.

(m)(1) A certificate of number once issued pursuant to this Code section shall be considered void upon the happening of any one of the following events:

(A) The owner transfers all his or her interest in said vessel to another person or involuntarily loses his or her interest through legal process;

(B) The vessel is destroyed or abandoned;

(C) It is discovered by the department that the application submitted by the owner contains false or fraudulent information;

(D) The fees for issuance are not paid by the applicant; or

(E) The state of principal use is changed.

(2) A void certificate shall be surrendered to the department within 15 days from the date that it becomes or is declared to be void.

(n) The number placed on the forward half of the vessel by the owner shall be removed by the owner if:

(1) The vessel is documented under the laws of the United States;

(2) The certificate or number becomes invalid because it is determined that a false or fraudulent statement was made in the application or the fees have not been paid; or

(3) The vessel is no longer used in this state.

(o) The board shall be authorized to establish, by rule or regulation, a procedure to refund fees collected pursuant to this chapter which were collected in error or overpayment or to which the department or state is otherwise not entitled. (Ga. L. 1960, p. 235, §§ 6, 7; Ga. L. 1965, p. 251, § 1; Ga. L. 1968, p. 487, §§ 3-6; Ga. L. 1973, p. 1427, § 6; Ga. L. 1976, p. 1632, §§ 5-7; Ga. L. 1977, p. 1182, §§ 2, 3; Ga. L. 1980, p. 738, §§ 2-4; Ga. L. 1981, p. 147, §§ 1-3; Ga. L. 1982, p. 3, § 52; Ga. L. 1987, p. 567, §§ 3, 4; Ga. L. 1992, p. 6, § 52; Ga. L. 1992, p. 470, § 3; Ga. L. 1992, p. 998, § 2; Ga. L. 1993, p. 351, § 1; Ga. L. 1996, p. 1276, § 1; Ga. L. 2011, p. 558, § 5/SB 121; Ga. L. 2013, p. 892, § 1/HB 497.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

52-7-6. Exemptions from numbering requirements.

A vessel shall not be required to be numbered under Code Sections 52-7-4 and 52-7-5 if it is:

(1) Not motor propelled; provided, however, that sailboats 12 feet or more in length shall require registration;

(2) Covered by a certificate of number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not be used on the waters of this state for a period in excess of 60 consecutive days;

(3) From a country other than the United States, provided that such vessel shall not be used on the waters of this state for a period in excess of 60 consecutive days;

(4) A vessel whose owner is the United States, a state, or a subdivision thereof, which vessel is used exclusively in the nonrecreation public service and which is clearly identifiable as such;

(5) A vessel's lifeboat if the boat is used solely for lifesaving purposes; this exemption does not include dinghies, tenders, speedboats, or other types of craft carried aboard vessels and used for other than lifesaving purposes;

(6) A vessel that is used exclusively for racing;

(7) A vessel belonging to a class of boats which has been exempted from numbering by the department after the department has found that:

(A) The numbering of vessels of such class will not materially aid in their identification;

(B) An agency of the federal government has a numbering system applicable to the class of vessel to which the vessel in question belongs; and

(C) The vessel would also be exempt from numbering if it were subject to the federal law;

(8) Operating temporarily by virtue of evidence that an application for a certificate of number has been submitted within the previous 60 days; or

(9) Used exclusively on privately owned ponds or lakes, except for those licensed by the Federal Energy Regulatory Commission. (Ga. L. 1960, p. 235, § 5; Ga. L. 1973, p. 1427, § 5; Ga. L. 1981, p. 147, § 4; Ga. L. 1982, p. 3, § 52; Ga. L. 1987, p. 567, § 5; Ga. L. 2006, p. 96, § 4/HB 1490; Ga. L. 2013, p. 892, § 2/HB 497.)

The 2013 amendment, effective July 1, 2013, in paragraph (8), substituted “that an application” for “that a recent application” in the middle and added “within the previous 60 days” at the end.

52-7-7. Dealers’ vessels.

(a) Any dealer may obtain certificates of number to be used only for the purpose of testing or demonstrating vessels owned by the dealer. The fee for the first certificate of number issued to any dealer for each vessel classification shall be the same fee as prescribed in subsection (d) of Code Section 52-7-5 and the dealer may then be issued additional certificates of number for testing and demonstrating purposes at a reduced fee as provided by the board. The amount of the reduced fee shall be determined by the board and shall be a reasonable approximation of the cost of producing and distributing the certificates of number and may be changed from time to time.

(b) Dealers shall be authorized to transfer certificates of number issued pursuant to this Code section from one vessel to another vessel in the same classification.

(c) Any dealer desiring certificates of number shall make application for them on standard vessel registration forms which shall be accompanied by an affidavit stating that the applicant is a vessel dealer or manufacturer.

(d) Numbers assigned by such certificates shall be temporarily placed on vessels within the certificate’s class range whenever such vessels are being tested or demonstrated and must be plainly marked “DEALER.” Such temporary placement of numbers shall be as the

board shall provide by regulation. (Ga. L. 1968, p. 487, § 7; Ga. L. 1973, p. 1427, § 7; Ga. L. 2013, p. 892, § 3/HB 497.)

The 2013 amendment, effective July 1, 2013, substituted “subsection (d)” for “subsection (c)” in the middle of the second sentence of subsection (a).

52-7-8. Classification of vessels; required equipment.

(a) **Classification.** Vessels subject to the provisions of this article shall be divided into four classes as follows:

- (1) Class A Less than 16 feet in length
- (2) Class 1 16 feet or over and less than 26 feet in length
- (3) Class 2 26 feet or over and less than 40 feet in length
- (4) Class 3 40 feet or more in length

(b) **Lights.** Every vessel in all weathers from sunset to sunrise shall carry and exhibit lights as provided by regulations of the board.

(c) **Whistle or horn.** Every vessel of Class 2 or 3 shall be provided with an efficient whistle or horn or other sound-producing mechanical appliance capable of producing signals required by the rules for the prevention of collision enacted by Congress.

(d) Lifesaving devices.

(1) Every vessel shall be equipped with and carry aboard, at all times, at least one Type I, II, III, or V (hybrid) personal flotation device for each person on board; provided, however, Type V (hybrid) devices are acceptable only when worn and securely fastened. In addition to the individual personal flotation device, each vessel 16 feet or more in length, except for canoes and kayaks, must at all times be equipped with at least one Type IV (throwable) device.

(2) No person may use a vessel upon the waters of this state unless the personal flotation devices as required in paragraph (1) of this subsection are readily accessible to the occupants of the vessel, are in good and serviceable condition, are legibly marked with the United States Coast Guard approved number, and are of an appropriate size for the occupants of the vessel for whom they are intended; provided, however, that provisions of this subsection shall not apply to racing sculls, racing shells, and racing sweeps.

(3) No person shall operate a moving vessel upon the waters of this state with a child under the age of 13 years on board such vessel unless such child is wearing an appropriately sized personal flotation

device, as required by this subsection to be on board the vessel. This requirement shall not apply when the child is within a fully enclosed roofed cabin or other fully enclosed roofed compartment or structure on the vessel.

(e) **Fire extinguishers.**

(1) Every mechanically propelled Class A and Class 1 vessel, constructed so as to have enclosed areas which permit entrapment of gases or vapors, shall carry aboard one Type B-I United States Coast Guard approved hand portable fire extinguisher unless there is a United States Coast Guard approved fixed fire-extinguishing system installed in the machinery space. When such a fixed fire-extinguishing system is installed in the machinery space, no hand portable fire extinguisher will be required.

(2) Every mechanically propelled Class 2 vessel, regardless of construction, shall carry aboard two Type B-I or one Type B-II United States Coast Guard approved hand portable fire extinguisher. When a United States Coast Guard approved fixed fire-extinguishing system is installed in the machinery space, one less Type B-I hand portable fire extinguisher is required.

(3) Every mechanically propelled Class 3 vessel, regardless of construction, shall carry aboard three Type B-I or one Type B-I and one Type B-II United States Coast Guard approved hand portable fire extinguisher. When a United States Coast Guard approved fixed fire-extinguishing system is installed in the machinery space, one less Type B-I hand portable fire extinguisher is required.

(4) The carriage of any dry stored pressure fire extinguishers not fitted with pressure gauges or indicating devices or any vaporizing liquid fire extinguishers containing carbon tetrachloride, chlorobomethane, or any other toxic vaporizing liquids is prohibited.

(5) The carriage of any United States Coast Guard approved hand portable fire extinguisher or any fixed fire extinguishing system which is not fully charged shall be prohibited.

(f) **Equipment exemptions in authorized races.** Subsections (c) and (e) of this Code section shall not apply to vessels while competing in any race conducted pursuant to Code Section 52-7-19 or, if such vessels are designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(g) **Flame arrester for carburetor.** Every vessel shall have the carburetor or carburetors of every engine therein, except outboard motors using gasoline as fuel, equipped with an efficient United States

Coast Guard approved flame arrester, backfire trap, or other similar device.

(h) **Ventilation.** Every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with means for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or flammable gases.

(i) **Rules and regulations.** No person shall operate or give permission for the operation of a vessel which is not equipped as required by this article or the rules and regulations of the department made pursuant thereto.

(j) **Sale of personal flotation devices.** It shall be unlawful for any person to sell or offer for sale within this state any personal flotation device which is not United States Coast Guard approved unless such device is clearly marked as follows: "Notice: This personal flotation device is not United States Coast Guard approved."

(k) **Definition.** As used in this Code section, the words "personal flotation device" shall not include flotation devices such as plastic toys, rafts, and other devices used for recreational purposes in or around swimming pools, lakes, or beaches when such devices are easily recognizable as not being designed or intended for use as lifesaving devices.

(l) **Penalty.** Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1968, p. 487, § 10; Ga. L. 1973, p. 1427, § 8; Ga. L. 1975, p. 773, § 1; Ga. L. 1976, p. 1632, §§ 2, 3; Ga. L. 1977, p. 1182, §§ 4-6; Ga. L. 1978, p. 1743, § 2; Ga. L. 1982, p. 3, § 52; Ga. L. 1984, p. 1203, § 1; Ga. L. 1985, p. 149, § 52; Ga. L. 1987, p. 567, § 6; Ga. L. 1992, p. 2075, § 1; Ga. L. 1994, p. 680, § 2; Ga. L. 1996, p. 326, § 1; Ga. L. 1996, p. 1273, § 1; Ga. L. 2001, p. 1000, § 1; Ga. L. 2003, p. 481, § 2; Ga. L. 2012, p. 775, § 52/HB 942; Ga. L. 2013, p. 92, § 4/SB 136.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted the last sentence of subsection (k), which read: "Any person who violates this Code section shall be guilty of a misdemeanor."

The 2013 amendment, effective May 15, 2013, substituted "under the age of 13 years on board such vessel unless such child" for "under age of ten on board such vessel unless the child" in the first sentence of paragraph (d)(3). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 92,

§ 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-8.2. Restrictions on operation of personal watercraft.

(a) As used in this Code section, the term:

(1) “Accompanied by” means in the physical presence within the vessel of a person who is not under the influence of alcohol, toxic vapors, or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel.

(2) “Personal watercraft” means a Class A vessel which:

(A) Has an outboard motor or which has an inboard motor which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion;

(B) Is designed with the concept that the operator and passenger ride on the outside surfaces of such vessel as opposed to riding inside such vessel; and

(C) Has the probability that the operator and passenger may, in the normal course of use, fall overboard.

Such term includes, without limitation, any vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of motive propulsion is a propeller, and any vessel commonly known as a “jet ski.”

(b) No person shall operate or give permission to operate personal watercraft on the waters of this state unless each person aboard such personal watercraft is wearing a United States Coast Guard approved personal flotation device, Type I, Type II, Type III, or Type V. Each such personal flotation device must be properly fastened, in good and serviceable condition, and the proper size for the person wearing it.

(c) Reserved.

(d) No person shall operate a personal watercraft on the waters of this state after sunset or before sunrise unless such person is engaged in the enforcement of the laws of this state or this nation.

(e) No person shall operate a personal watercraft on the waters of this state unless such personal watercraft is equipped with a self-circling device or a lanyard-type engine cutoff switch.

(f) No person shall operate on the waters of this state a personal watercraft which has been equipped by the manufacturer with a lanyard-type engine cutoff switch unless the lanyard and the switch are operational and unless the lanyard is attached to the operator, the operator’s clothing, or a personal flotation device worn by the operator.

(g) No person shall operate on the waters of this state a personal watercraft which has been equipped by the manufacturer with a

self-circling device if the self-circling device or the engine throttle has been altered in any way that would prohibit the self-circling device from operating in its intended manner.

(h) It shall be unlawful for any person who owns a personal watercraft or who has charge over or control of a personal watercraft to authorize or knowingly to permit such personal watercraft to be operated in violation of this Code section or of Code Section 52-7-8.3.

(i) The provisions of this Code section shall not apply to vessels engaged in any activity authorized under Code Section 52-7-19.

(j) No person shall operate a personal watercraft on the waters of this state at a speed greater than idle speed within 100 feet of any moored or anchored vessel, any vessel adrift, or any wharf, dock, pier, piling, bridge structure or abutment, person in the water, or shoreline adjacent to a full-time or part-time residence, public park, public beach, public swimming area, marina, restaurant, or other public use area.

(k) It shall be unlawful for any person to operate a personal watercraft on the waters of this state while towing a person or persons on water skis, aquaplanes, surfboards, tubes, or any similar device; provided, however, that the provisions of this subsection shall not apply to any personal watercraft designed by the manufacturer to carry three or more persons, provided that such personal watercraft has on board a competent observer in addition to the operator at any time that a person is being towed.

(l) No person under the age of 16 years shall operate a personal watercraft on the waters of this state; provided, however, that a person 12 through 15 years of age may operate a personal watercraft if he or she is accompanied by an adult 18 years of age or older or he or she has successfully completed a boating education course approved by the department. The department may conduct or provide boating education courses to the public.

(m) It shall be unlawful for any person to cause or knowingly permit such person's child or ward who is less than 12 years of age or the child or ward of another over whom such person has a permanent or temporary responsibility of supervision if such child or ward is less than 12 years of age to operate a personal watercraft.

(n) It shall be unlawful for any person to cause or knowingly permit such person's child or ward who is age 12 through 15 years or the child or ward of another over whom such person has a permanent or temporary responsibility of supervision if such child or ward is age 12 through 15 years to operate a personal watercraft other than in compliance with the provisions of subsection (l) of this Code section. (Code 1981, § 52-7-8.2, enacted by Ga. L. 1992, p. 2075, § 2; Ga. L.

1994, p. 680, §§ 3, 4; Ga. L. 1995, p. 10, § 52; Ga. L. 1998, p. 679, § 1; Ga. L. 2013, p. 92, § 5/SB 136.)

The 2013 amendment, effective May 15, 2013, in subsection (a), inserted “, toxic vapors,” in paragraph (a)(1); deleted former paragraph (a)(2), which read: “‘Class A vessel’ means a boat less than 16 feet in length.”; redesignated former paragraph (a)(3) as present paragraph (a)(2); substituted “such vessel” for “the vessel” twice in subparagraph (a)(2)(B); in the ending undesignated paragraph of paragraph (a)(2), substituted “vessel commonly” for “vessels commonly” near the end; and deleted former paragraph (a)(4), which read: “‘Under the direct supervision’ means within sight of and within 400 yards of a person who is not under the influence of alcohol or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel and who is aware of his or her supervisory responsibility.”; substituted the present provisions of subsection (c) for the former provisions, which read: “No person shall rent, lease, or let for hire a personal watercraft to any person under the age of 16 years”; substituted the present provisions of subsection (l) for the former provisions, which read: “On and after June 1, 1995, no person under the age of 16 years shall operate a personal watercraft on the waters of this state; provided, however, that a person age 12

through 15 years may operate a personal watercraft if he or she is accompanied by an adult age 18 or over or he or she has successfully completed a personal watercraft safety program approved by the department or is under direct supervision by an adult age 18 or over. The department may, but shall not be required to, conduct or provide personal watercraft safety courses to the public.”; and substituted “It shall” for “On and after July 1, 1995, it shall” at the beginning of subsection (m). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 5, 6, and 11 of this Act shall be known and may be cited as the “Kile Glover Boat Education Law”.

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-8.3. Operation of watercraft; identification; operation by minors.

(a) A person 16 years of age or older may operate any vessel or personal watercraft on any of the waters of this state if such person has met the applicable requirements of Code Section 52-7-22, and such person has in such vessel proper identification.

(b) A person 12 through 15 years of age may operate a personal watercraft or Class A vessel on any of the waters of this state in compliance with the provisions of this article if such person:

(1) Is accompanied by an adult 18 years of age or older who is authorized to operate such vessel under the provisions of subsection (a) of this Code section; or

(2) Has completed a boating education course approved by the department.

(c) No person between 12 through 15 years of age may operate a Class 1, Class 2, or Class 3 vessel.

(d) No person under the age of 12 years shall operate any Class 1, 2, or 3 vessel or any personal watercraft on any of the waters of this state, and no such person shall operate any Class A vessel utilizing mechanical means of propulsion exceeding 30 horsepower. Such person may operate a Class A vessel, other than a personal watercraft, utilizing mechanical means of propulsion not exceeding 30 horsepower only where such person is accompanied by an adult 18 years of age or older who is authorized to operate such vessel under the provisions of subsection (a) of this Code section.

(e) No person having ownership or control of a vessel shall permit another person to operate such vessel in violation of this Code section.

(f) No person shall rent, lease, or let for hire any vessel ten horsepower or more to any person under 16 years of age. On and after July 1, 2014, a person 16 years of age or older may rent or lease any vessel ten horsepower or more if such person has completed a boating education course approved by the department. This subsection shall not apply to any person licensed by the United States Coast Guard as a master of a vessel or a nonresident who has in his or her possession proof that he or she has completed a National Association of State Boating Law Administrators approved boater education course or equivalency examination from another state.

(g) As used in this Code section, the term:

(1) “Accompanied by” means in the physical presence within the vessel of a person who is not under the influence of alcohol, toxic vapors, or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel.

(2) “Personal watercraft” shall have the same meaning as set forth in Code Section 52-7-8.2.

(3) “Proper identification” shall have the same meaning as in subsection (d) of Code Section 3-3-23, relating to furnishing of alcoholic beverages. (Code 1981, § 52-7-8.3, enacted by Ga. L. 1998, p. 679, § 2; Ga. L. 2000, p. 1563, § 1; Ga. L. 2003, p. 140, § 52; Ga. L. 2013, p. 92, § 6/SB 136.)

The 2013 amendment, effective May 15, 2013, rewrote subsections (a) through (c); in subsection (d), inserted “years” near the beginning of the first sentence, substituted “adult 18 years of age or older” for “adult age 18 or over” in middle of the second sentence; added subsections (e) and (f); redesignated former subsection

(e) as present subsection (g); inserted “, toxic vapors,” in the middle of paragraph (g)(1); added paragraph (g)(2); redesignated the former last sentence of former subsection (e) as present paragraph (g)(3); deleted former paragraph (g)(3), which read: “Under the direct supervision” means within sight of and within 400

yards of a person who is not under the influence of alcohol or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel and who is aware of his or her supervisory responsibility.”; and deleted former subsection (f), which read: “No person having ownership or control of a vessel shall permit another person to operate such vessel in violation of this Code section.” See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 5, 6, and 11 of this Act shall be known and

may be cited as the “Kile Glover Boat Education Law”.

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-11. Lights.

(a) **Categories.** Requirements for lights on vessels operated within this state fall into two categories: regulations for vessels using inland waters (waters of this state) and regulations for vessels using international waters (coastal waters). Vessels equipped to meet international waters requirements may operate on any waters; however, vessels equipped to meet inland waters requirements are restricted to inland waters.

(b) **Inland waters (waters within the state) requirements.**

(1) All nonmotorized vessels being operated during hours of darkness or low visibility shall have ready at hand a white light which shall be displayed in time to prevent collision.

(2) All motorized Class A and Class 1 vessels being operated during hours of darkness or low visibility shall display a 32 point white stern light visible for a distance of two miles, plus a 20 point combination red and green light on the bow or ten-point combination red and green side lights properly screened and visible for a distance of one mile and displayed lower than the white stern light.

(3) All motorized Class 2 and 3 vessels being operated during hours of darkness or low visibility shall display a 20 point white light on the bow visible for a distance of two miles, plus a 32 point white light on the stern fixed higher than the white light forward and visible for a distance of two miles, plus separate ten-point red and green side lights fitted with inboard screens to keep the lights from showing across the bow and visible for a distance of one mile.

(4) Class A and Class 1 vessels equipped with sail only or sail and motor, when under sail only while being operated during hours of darkness or low visibility, shall display a 20 point combination red

and green light on the bow visible for a distance of one mile, plus a 12 point white stern light visible for a distance of two miles.

(5) Class 2 and Class 3 vessels equipped with sail only or sail and motor, when under sail only while being operated during the hours of darkness or low visibility, shall display separate ten-point red and green side lights, properly screened and visible for a distance of at least one mile, plus a 12 point white stern light visible for a distance of at least two miles.

(6) When any vessel is being powered by sail and motor both, that vessel shall carry the same lights as those required for power alone.

(c) International waters (coastal) requirements.

(1) All motorized Class A, Class 1, and Class 2 vessels being operated during the hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow, or else ten-point red and green side lights properly screened and visible for a distance of at least one mile, plus a 20 point white light displayed in the fore part of the vessel and visible for a distance of three miles displayed three feet above the combination or side lights, plus a 12 point white stern light visible for a distance of at least two miles.

(2) All motorized Class 3 vessels being operated during the hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow or else ten-point red and green side lights properly screened and visible for a distance of one mile, plus a 20 point white light in the fore part of the vessel displayed nine feet above the gunwales and three feet higher than the colored lights and visible for a distance of three miles, plus a 12 point white stern light visible for at least two miles.

(3) All Class A, Class 1, and Class 2 vessels equipped with sail and motor being operated under power during hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow or else ten-point red and green side lights properly screened and visible for one mile, plus a 20 point white light in the fore part of the vessel at least three feet higher than the colored lights and visible for a distance of three miles, plus a 12 point white stern light visible for a distance of two miles.

(4) All Class 3 vessels equipped with sail and motor being operated under power during hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow or else ten-point red and green side lights properly screened and visible for a distance of two miles, plus a 20 point white light in the fore part of the vessel at least nine feet above the gunwale and three feet higher than the colored lights and visible for a distance of two miles, plus a 12 point white stern light visible for a distance of two miles.

(5) All sailboats of Class A, Class 1, and Class 2 being operated under sail only during the hours of darkness or low visibility shall display a 20 point combination red and green bow light visible for a distance of one mile, or ten-point red and green side lights properly screened and visible for a distance of one mile, plus a 12 point white stern light visible for a distance of two miles.

(6) All sailboats of Class 3, being operated under sail only during the hours of darkness or low visibility shall display a 20 point combination red and green bow light visible for a distance of one mile, or ten-point red and green side lights properly screened and visible for a distance of one mile, plus a 12 point white stern light visible for a distance of two miles.

(7) Sailing vessels may carry on top of the foremast two 20 point lights in a vertical line one over the other and separated so as to be clearly distinguished. The upper light shall be red and the lower light green.

(d) **Vessels at anchor.** All vessels at anchor, except those anchored or moored within marinas or other designated anchorages, shall display a 32 point white stern light during hours of darkness or low visibility.

(e) **Other lights.** During the hours of darkness or low visibility, no other lights which may be mistaken for those prescribed shall be exhibited. (Ga. L. 1977, p. 1182, § 7; Ga. L. 1995, p. 10, § 52; Ga. L. 2013, p. 92, § 7/SB 136.)

The 2013 amendment, effective May 15, 2013, substituted “bow or ten-point combination red and green side lights properly screened and visible” for “bow, visible” in the middle of paragraph (b)(2). See editor’s notes.

Editor’s notes. — Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that

Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-12. (For effective date, see note.) Operation of watercraft while under influence of alcohol, toxic vapors, or drugs; legal drug use not exempted; blood and other chemical tests; test refusal; owner’s liability for allowing another to operate while intoxicated; civil and criminal actions; child endangerment.

(a) No person shall operate, navigate, steer, or drive any moving vessel, or be in actual physical control of any moving vessel, nor shall any person manipulate any moving water skis, moving aquaplane, moving surfboard, or similar moving device while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(2) Under the influence of any drug to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while

operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol or drugs, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance, shall be admissible. Where such chemical test is made, the following provisions shall apply:

(1) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation is authorized to approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, which shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences;

(2) When a person undergoes a chemical test at the request of a law enforcement officer under subsection (e) of this Code section, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic or drug content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning such test or tests shall be made available to such person or such person's attorney. The arresting officer at the time of arrest shall advise the person arrested of his or her rights to a chemical test or tests according to this Code section.

(d) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while

operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(1) If there was at that time an alcohol concentration of 0.05 grams or less, it shall be presumed that the person was not under the influence of alcohol, as prohibited by paragraphs (1), (4), and (5) of subsection (a) of this Code section;

(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1), (4), and (5) of subsection (a) of this Code section, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1), (4), and (5) of subsection (a) of this Code section; and

(3) If there was at that time or within three hours after operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended an alcohol concentration of 0.08 or more grams, the person shall be in violation of paragraph (5) of subsection (a) of this Code section.

(e) The State of Georgia considers that persons who are under the influence of alcohol, toxic vapors, or drugs while operating a vessel on the waters of this state constitute a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a vessel upon the waters of this state shall be deemed to have given consent, subject to subsection (c) of this Code section, to a chemical test or tests of his or her blood, breath, or urine or other bodily substance for the purpose of determining the alcoholic or drug content of his or her blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating, navigating, steering, driving, manipulating, or in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, toxic vapors, or any drug. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been operating or was in actual physical control of a vessel upon the waters of this state while under the

influence of alcohol, toxic vapors, or any drug. Subject to subsection (c) of this Code section, the requesting law enforcement officer shall designate which of the aforesaid tests shall be administered.

(f) Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (e) of this Code section, and the test or tests may be administered subject to subsection (c) of this Code section.

(g) If a person refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (e) of this Code section, no test shall be given; however, such refusal shall be admissible in evidence.

(h) In the event of a boating accident involving a fatality, the investigating coroner or medical examiner having jurisdiction shall direct that a chemical blood test to determine blood alcohol concentration (BAC) or the presence of drugs be performed on the dead person or persons and that the results of such test be properly recorded in his or her report.

(i) It shall be unlawful for the owner of any vessel knowingly to allow or authorize any person to operate such vessel or to manipulate any water skis, aquaplane, surfboard, or similar device being towed by such vessel when the owner knows or has reasonable grounds to believe that said person is intoxicated or under the influence of alcohol, toxic vapors, or drugs in violation of this Code section.

(j) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of this Code section, if there was at that time or within three hours after operating, navigating, steering, driving, or being in actual physical control of a moving vessel or personal watercraft from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of this Code section.

(k)(1) A person under the age of 21 years shall not operate, navigate, steer, drive, or be in actual physical control of any moving vessel, moving water skis, moving aquaplane, moving surfboard or similar moving device, or personal watercraft while such person's alcohol concentration is 0.02 grams or more at any time within three hours after such operating, navigating, steering, driving, or being in actual physical control from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended.

(2) No plea of nolo contendere shall be accepted for any person under the age of 21 years charged with a violation of this Code section.

(l) (For effective date, see note.) A person who violates this Code section while transporting in a moving vessel or personal watercraft or towing on water skis, an aquaplane, a surfboard, or similar device a child under the age of 14 years shall be guilty of the separate offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs. The offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs shall not be merged with the offense of operating a vessel under the influence of alcohol, toxic vapors, or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1.

(m) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor; upon a third conviction thereof, be guilty of a high and aggravated misdemeanor; and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) For the first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-5-1. The sponsor of any such program shall provide written notice of the Department of Drivers

Service's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion, such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-5-1. The sponsor of any such program shall provide written notice of the Department of Drivers Service's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-5-1. The sponsor of any such program shall provide written notice of the Department of Drivers Service's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-5-1. The sponsor of any such program shall provide written notice of the Department of Driver Service's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to May 15, 2013, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(6) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after May 15, 2013, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(n)(1) If the payment of the fine required under subsection (m) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments, and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (m) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(o) As used in this Code section, the term "personal watercraft" shall have the same meaning as set forth in Code Section 52-7-8.2. (Ga. L. 1968, p. 487, § 10; Ga. L. 1973, p. 1427, § 11; Ga. L. 1986, p. 612, § 1; Ga. L. 1987, p. 3, § 52; Ga. L. 1992, p. 2075, § 3; Ga. L. 1994, p. 680,

§ 5; Ga. L. 1998, p. 672, § 1; Ga. L. 2013, p. 92, § 8/SB 136; Ga. L. 2013, p. 294, § 4-62/HB 242.)

Delayed effective date. — Subsection (l), as set out above, becomes effective January 1, 2014. Until January 1, 2014, subsection (l) reads as follows: “A person who violates this Code section while transporting in a moving vessel or personal watercraft or towing on water skis, an aquaplane, a surfboard, or similar device a child under the age of 14 years shall be guilty of the separate offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs. The offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs shall not be merged with the offense of operating a vessel under the influence of alcohol, toxic vapors, or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child.”

The 2013 amendments. — The first 2013 amendment, effective May 15, 2013, throughout this Code section, inserted “, toxic vapors,” and substituted “bodily substance” for “bodily substances”; added paragraph (a)(3); redesignated former paragraphs (a)(3) through (a)(5) as present paragraphs (a)(4) through (a)(6), respectively; and, in paragraph (a)(4), substituted “any two or more of the substances specified in paragraphs (1) through (3) of this subsection” for “alcohol and any drug” near the beginning; in paragraphs (a)(5) and (d)(3), substituted “0.08” for “0.10”; in the introductory paragraph of subsection (c), in the first sentence, and in paragraph (c)(4), in the first sentence, inserted “the” following “Upon” near the beginning; in paragraph (c)(2), in the first sentence, substituted “person undergoes” for “person shall undergo” near the beginning, and inserted “or drug” near the middle; in paragraph (c)(4), in the first sentence, substituted “who submits” for “who shall submit”, and substituted “such

test” for “the test”; in paragraph (d)(1) and twice in paragraph (d)(2), substituted “paragraphs (1), (4), and (5)” for “paragraphs (1), (2), and (3)”; added “and” at the end of paragraph (d)(2); deleted former paragraph (d)(3), which read: “If there was at that time an alcohol concentration of 0.08 grams or more, it shall be presumed that the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section; and”; redesignated former paragraph (d)(4) as present paragraph (d)(3); and, in paragraph (d)(3), substituted “paragraph (5)” for “paragraph (4)”; in subsection (e), substituted “subsection (c)” for “subsections (c) and (d)” in the second and last sentences, and in subsection (f); in paragraphs (k)(1) and (k)(2), inserted “years”; in paragraph (k)(1), substituted “such person’s” for “the person’s” near the middle; in paragraph (l), in the first sentence, added a comma following “surfboard” and substituted “14 years shall be” for “14 years is”; and added subsections (m) through (o). See editor’s note for applicability. The second 2013 amendment, effective January 1, 2014, deleted “, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child” following “Code Section 16-12-1” at the end of the last sentence of subsection (l). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 8, 9, and 10 of this Act shall be known and may be cited as the “Jake and Griffin Prince BUI Law.”

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction

or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the

statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

52-7-12.5. Ordering drug, alcohol, or other substance tests; implied consent notice; reports; suspension; hearing; certificate of inspection.

(a) The test or tests required under Code Section 52-7-12 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 and the officer has arrested such person for a violation of Code Section 52-7-12, any federal law in conformity with Code Section 52-7-12, or any local ordinance which is identical to Code Section 52-7-12 in accordance with Code Section 52-7-21 or the person has been involved in a boating accident resulting in serious injuries or fatalities. Subject to Code Section 52-7-12, the requesting law enforcement officer shall designate which test shall be administered initially and may subsequently require a test or tests for any substance not initially tested.

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent warning from the following:

(1) Implied consent notice for suspects under 21 years of age:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your privilege to operate a vessel on the waters of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.02 grams or more or the presence of any illegal drug, your privilege to operate a vessel on the waters of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will

you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"; or

(2) Implied consent notice for suspects 21 years of age or older:

"Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your privilege to operate a vessel on the waters of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more or the presence of any illegal drug, your privilege to operate a vessel on the waters of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

If any such notice is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 52-7-12.6, and the results of any chemical test, or the refusal to submit to a test, shall be admitted into evidence against such person. Such notice shall be read in its entirety but need not be read exactly so long as the substance of the notice remains unchanged.

(c) Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 52-7-12 if such evidence was obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States.

(d) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension of the privilege of operating a vessel on the waters of this state is required under this Code section, the results shall be reported to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters

of this state and was involved in a boating accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of 0.08 grams or more or, for a person under the age of 21 years, an alcohol concentration of 0.02 grams or more, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege to operate a vessel upon the waters of this state pursuant to Code Section 52-7-12.6, subject to review as provided for in this Code section.

(e) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege of operating a vessel on the waters of this state for a period of one year.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the privilege of operating a vessel on the waters of this state of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The officer shall forward to the department the notice of intent to suspend and the report required by subsection (d) or (e) of this Code section within ten calendar days after the date of the arrest of such person. The failure of the officer to transmit the sworn report required by this Code section within ten calendar days shall not prevent the department from accepting such report and utilizing it in the suspension of an operator's privilege as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the report of such officer, shall suspend

the person's privilege to operate a vessel and, by regular mail, at the last known address, notify such person of such suspension. The notice shall inform the person of the grounds of suspension, the effective date of the suspension, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose operator's privilege is suspended pursuant to this Code section shall request, in writing, a hearing within ten business days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded. For purposes of such hearing, a copy of the report required by subsection (d) or (e) of this Code section shall be made a part of the hearing record and shall create a rebuttable presumption that the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length.

(2) The scope of the hearing shall be limited to the following issues:

(A)(i) Whether the law enforcement officer had reasonable grounds to believe the person was operating or in actual physical control of a moving vessel while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 52-7-12.

(ii) Whether the person was involved in a vessel accident or collision resulting in serious injury or fatality;

(B) Whether at the time of the request for the test or tests the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test and:

(i) Whether the person refused the test; or

(ii) Whether a test or tests were administered and the results indicated an alcohol concentration of 0.08 grams or more or, for a person under the age of 21 years, an alcohol concentration of 0.02 grams or more; and

(C) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufac-

turer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the suspension of the person's privilege to operate a vessel on the waters of this state. If no hearing is requested within the ten business days specified in paragraph (1) of this subsection, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The request for a hearing shall not stay the suspension of the person's privilege to operate a vessel on the waters of this state; provided, however, that if the hearing is timely requested and is not held within 60 days and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4) In the event the person is acquitted of a violation of Code Section 52-7-12 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated. An accepted plea of nolo contendere shall be entered on the operator's record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 52-7-12.

(h) If the suspension is sustained after such a hearing, the person whose privilege to operate a vessel on the waters of this state has been suspended under this Code section shall have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; while such appeal is pending, the order of the department shall not be stayed.

(i) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be

self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (c) of Code Section 52-7-12 and subparagraph (g)(2)(C) of this Code section. (Code 1981, § 52-7-12.5, enacted by Ga. L. 1998, p. 672, § 2; Ga. L. 1999, p. 81, § 52; Ga. L. 2000, p. 1589, § 3; Ga. L. 2013, p. 92, § 9/SB 136.)

The 2013 amendment, effective May 15, 2013, throughout this Code section, substituted “0.08” for “0.10” and deleted “sworn” preceding “report”; in subsection (a), substituted “initially and may subsequently require a test or tests for any substance not initially tested” for “, provided that the officer shall require a breath test or a blood test and may require a urine test” at the end of the last sentence; rewrote subsection (b); substituted the present provisions of subsection (c) for the former provisions, which read: “Subsection (b) of this Code section shall apply to any case wherein the request for chemical testing is made regarding an offense committed on or after June 1, 1998. Subsection (b) of this Code section shall not apply to any case wherein the request for chemical testing was made regarding an offense committed prior to June 1, 1998, in which case those provisions of former Code Section 52-7-12 governing the admissibility of evidence of results of chemical testing or refusal to submit to chemi-

cal testing which were in effect at the time the offense was committed shall apply.”; inserted “years” following “21” in the middle of the second sentence of subsection (d) and in division (g)(2)(B)(ii); and added the last sentence in paragraph (g)(1). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 8, 9, and 10 of this Act shall be known and may be cited as the “Jake and Griffin Prince BUI Law.”

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-12.6. Terms of suspension; return of operating privilege; operation when suspended.

(a) Any operator’s privilege to operate a vessel on the waters of this state required to be suspended under subsection (d) of Code Section 52-7-12.5 shall be suspended subject to the following terms and conditions:

(1) Upon the first suspension pursuant to subsection (d) of Code Section 52-7-12.5 within the previous five years, as measured from the dates of previous arrests for which a suspension was obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for one year. Not sooner than 120 days following the effective date of suspension, the person may apply to the department for reinstatement of his or her operator’s privilege. Such privilege shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of

\$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00. An operator's privilege suspended pursuant to Code Section 52-7-12.5 shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00;

(2) Upon the second suspension pursuant to subsection (d) of Code Section 52-7-12.5 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for three years. Not sooner than 18 months following the effective date of suspension, the person may apply to the department for reinstatement of the person's operator's privilege. Such privilege shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00. An operator's privilege suspended pursuant to Code Section 52-7-12.5 shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00;

(3) Upon the third or subsequent suspension pursuant to subsection (d) of Code Section 52-7-12.5 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for not less than five years and until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00; and

(4) Any person convicted of violating Code Section 52-7-12.2, 52-7-12.3, or 52-7-12.4 shall have his or her privilege to operate a vessel on the waters of this state suspended for three years. Such privilege shall be reinstated after the expiration of the three-year period if such person submits proof of completion of a boating education course approved by the department and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00.

(b) In all cases in which the department may return the privilege to operate a vessel on the waters of this state to an operator prior to the termination of the full period of suspension, the department may require such tests of operating skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the operator's past operating record and performance and the operator's payment of a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00.

(c) Any person who operates a vessel or personal watercraft on any of the waters of this state at a time when such person's privilege to do so has been suspended shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00; provided, however, that for a second and each subsequent conviction within a five-year period measured from the date of the previous arrest upon which a conviction was obtained to the date of the current arrest, such person shall be guilty of a misdemeanor of a high and aggravated nature and shall be punished by a fine of not less than \$1,000.00 nor more than \$1,500.00. The period suspension of the privilege to operate a vessel on the waters of the state of any person convicted under this subsection shall be extended for an additional six months for each such conviction. (Code 1981, § 52-7-12.6, enacted by Ga. L. 1998, p. 672, § 3; Ga. L. 2001, p. 1000, § 2; Ga. L. 2005, p. 334, § 31-1/HB 501; Ga. L. 2013, p. 92, § 10/SB 136.)

The 2013 amendment, effective May 15, 2013, in subsection (a), added "and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00" throughout; in paragraph (a)(1), substituted "120 days" for "30 days" near the beginning of the second sentence; in paragraph (a)(2), substituted "18 months" for "120 days" near the beginning of the second sentence, and deleted "and" at the end; added "and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00; and" at the end of paragraph (a)(3); and added paragraph (a)(4); and, at the end of subsection (b), added "and the operator's payment of a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration

fee shall be \$500.00". See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 8, 9, and 10 of this Act shall be known and may be cited as the "Jake and Griffin Prince BUI Law."

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-22. Comprehensive boating educational programs; required completion; exception.

(a) The department shall establish a comprehensive boating education program and may seek the cooperation of boatmen, the federal government, and other states. The department may accept moneys made available under federal safety programs and may issue boating certificates to persons who complete courses in boating education.

(b) Effective July 1, 2014, and except as otherwise provided by this chapter, anyone born on or after January 1, 1998, who operates any motorized vessel on the waters of this state shall complete a boating education course approved by the department prior to the operation of such vessel.

(c) A person shall be exempt from the provisions of subsection (b) of this Code section if he or she is:

(1) Licensed by the United States Coast Guard as a master of a vessel;

(2) Operating such vessel on a private lake or pond; or

(3) A nonresident who has in his or her possession proof that he or she has completed a National Association of State Boating Law Administrators approved boater education course or the equivalency from another state. (Ga. L. 1973, p. 1427, § 1; Ga. L. 2013, p. 92, § 11/SB 136.)

The 2013 amendment, effective May 15, 2013, designated the existing provisions as subsection (a); substituted the present provisions of subsection (a) for the former provisions, which read: "The department is authorized to inaugurate a comprehensive boating safety and boating education program and to seek the cooperation of boatmen, the federal government, and other states. The department may accept moneys made available under federal safety programs and may issue safety certificates to persons who complete courses in boating safety education."; and added subsections (b) and (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General

Assembly, provides, in part, that Sections 5, 6, and 11 of this Act shall be known and may be cited as the "Kile Glover Boat Education Law".

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-26. Penalty.

Except as otherwise provided in this article, any person who violates this article or any rule or regulation promulgated hereunder shall be

guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term “rules and regulations” means those rules and regulations of the Board of Natural Resources in force and effect on February 5, 2013. (Ga. L. 1960, p. 235, § 13; Ga. L. 1968, p. 487, § 12; Ga. L. 1973, p. 1427, § 25; Ga. L. 1983, p. 3, § 41; Ga. L. 1995, p. 236, § 3; Ga. L. 2012, p. 739, § 29/HB 869; Ga. L. 2013, p. 92, § 12/SB 136.)

The 2012 amendment, effective May 1, 2012, added the last sentence in this Code section.

The 2013 amendment, effective May 15, 2013, in the second sentence of this Code section, substituted “means” for “shall mean” in the middle, and substituted “February 5, 2013” for “January 1, 2012” at the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General

Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

ARTICLE 2

DISPLAYING OF WATERCRAFT INFORMATION

52-7-51. Penalty.

(a) Any person who violates this article or any rules and regulations issued hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term “rules and regulations” means those rules and regulations of the Board of Natural Resources in force and effect on February 5, 2013.

(b) Failure to affix a proper capacity plate shall constitute a separate violation for each watercraft with respect to which such failure occurs. (Ga. L. 1971, p. 419, § 12; Ga. L. 2012, p. 739, § 30/HB 869; Ga. L. 2013, p. 92, § 13/SB 136.)

The 2012 amendment, effective May 1, 2012, added the last sentence in subsection (a).

The 2013 amendment, effective May 15, 2013, in the second sentence of subsection (a), substituted “means” for “shall mean” in the middle, and substituted “February 5, 2013” for “January 1, 2012” at the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92,

§ 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of

nolo contendere is obtained on or after
May 15, 2013, shall be considered.

TITLE 53
WILLS, TRUSTS, AND ADMINISTRATION OF
ESTATES

CHAPTER 1
GENERAL PROVISIONS

ARTICLE 1
IN GENERAL

53-1-2. Definitions.

Law reviews. — For annual survey on administration, see 64 Mercer L. Rev. 325
wills, trusts, guardianships, and fiduciary (2012).

**53-1-5. Right of individual who feloniously and intentionally
kills or conspires to kill to inherit.**

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in O'Brien v. Bruscato, 289 Ga.
739, 715 S.E.2d 120 (2011).

CHAPTER 2
DESCENT AND DISTRIBUTION

ARTICLE 1
GENERAL PROVISIONS

**53-2-1. Rules of inheritance when decedent dies without will;
effect of abandonment of child.**

Law reviews. — For annual survey on administration, see 64 Mercer L. Rev. 325
wills, trusts, guardianships, and fiduciary (2012).

53-2-7. Vesting of title to property; right to possession.

Law reviews. — For annual survey on administration, see 64 Mercer L. Rev. 325
wills, trusts, guardianships, and fiduciary (2012).

ARTICLE 5

ESCHEAT

Law reviews. — For comment, “Un- Laws and Gift Cards,” see 60 Emory L. J.
wrapping Escheat: Unclaimed Property 971 (2011).

CHAPTER 3

YEAR’S SUPPORT

53-3-1. Preference and entitlement.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION GENERALLY

1. IN GENERAL

General Consideration

Cited in Cabrel v. Lum, 289 Ga. 233,
710 S.E.2d 810 (2011).

Application Generally

1. In General

Denial of spouse’s petition for year’s support improper. — Probate court erred by allowing the objections of a bank and a decedent’s parents solely on the basis of adverse title and by denying a year’s support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked

the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow’s support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In re Mahmoodzadeh, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

53-3-5. Filing of petition.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION GENERALLY

1. IN GENERAL

General Consideration

Cited in *Cabrel v. Lum*, 289 Ga. 233, 710 S.E.2d 810 (2011).

Application Generally

1. In General

Denial of spouse's petition for year's support improper. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked

the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In *re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

53-3-6. Issuance of citation and publication of notice; mailing of petition to tax commissioner.

JUDICIAL DECISIONS

Year's support.

Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; de-

spite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In *re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

53-3-7. Hearing and determination.

JUDICIAL DECISIONS

Denial of spouse's petition for year's support improper. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court

proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In *re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

Superior court erred in setting aside the year's support award for failure to provide evidence of the amount sufficient to constitute a year's support because the only issue properly before the superior court on appeal from the probate court under

O.C.G.A. § 5-3-29 was whether or not an objection had been made to the petitioner's petition for year's support, and because the superior court found that no objection had been made to the petition for year's support, the court erred in placing the burden of proof to show the amount

sufficient for year's support upon the petitioner as the language of O.C.G.A. § 53-3-7(c) indicated that the petitioner shouldered that burden of proof only once an objection had been made. *Garren v. Garren*, 316 Ga. App. 646, 730 S.E.2d 123 (2012).

53-3-19. Conveyance or encumbrance by surviving spouse of property set aside; effect.

JUDICIAL DECISIONS

Interest in year's support property. — Trial court did not err in refusing to set aside as void any sale of year's support property by a mother because the question of the extent of the daughters' interests in the year's support property was resolved in a partitioning judgment, which awarded the daughters their share of the

year's support property; because the partitioning judgment was not appealed, the daughters could not complain that the daughters had a greater interest in the property than that which was awarded. *Cabrel v. Lum*, 289 Ga. 233, 710 S.E.2d 810 (2011).

53-3-20. Conveyance or encumbrance by surviving spouse of property set aside; approval of probate court.

JUDICIAL DECISIONS

Interest in year's support property. — Trial court did not err in refusing to set aside as void any sale of year's support property by a mother because the question of the extent of daughters' interests in the year's support property was resolved in a partitioning judgment, which awarded the daughters their share of the year's

support property; because the partitioning judgment was not appealed, the daughters could not complain that the daughters had a greater interest in the property than that which was awarded. *Cabrel v. Lum*, 289 Ga. 233, 710 S.E.2d 810 (2011).

CHAPTER 4

WILLS

ARTICLE 1

GENERAL PROVISIONS

53-4-1. Power of testator.

JUDICIAL DECISIONS

Application of pre-1998 probate code. — Trial court did not err when the court applied the law in place before the 1998 probate code was adopted to determine whether a husband and wife had a contract not to revoke their joint and mutual will because the issue was not the propriety of the devises in the will but

whether the husband and wife had a contract not to revoke the will; the 1998 probate code only applies to contracts entered into on or after January 1, 1998, so it would not apply to any contract allegedly made in 1980. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

53-4-2. When will takes effect.

JUDICIAL DECISIONS

Application of pre-1998 probate code. — Trial court did not err when the court applied the law in place before the 1998 probate code was adopted to determine whether a husband and wife had a contract not to revoke their joint and mutual will because the issue was not the propriety of the devises in the will but

whether the husband and wife had a contract not to revoke the will; the 1998 probate code only applies to contracts entered into on or after January 1, 1998, so it would not apply to any contract allegedly made in 1980. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

53-4-3. Determination whether instrument is will.

JUDICIAL DECISIONS

Directed verdict denial proper. — In a will contest action between a goddaughter and a first cousin, the trial court properly denied the challenging first cousin's motion for a directed verdict because the testimony of the goddaughter, viewed in her favor, supported the finding both that the testatrix intended the two docu-

ments at issue together to express her desired dispositive scheme and that the two documents were presented together for attestation; thus, the evidence supported the jury's finding that the two documents together did in fact create a valid will. *Lee v. Swain*, 291 Ga. 799, 733 S.E.2d 726 (2012).

ARTICLE 2

TESTAMENTARY CAPACITY

53-4-11. Decided and rational desire; incapacity to contract; insanity; advanced age or eccentricity.

JUDICIAL DECISIONS

ANALYSIS

PLEADING AND PRACTICE

Pleading and Practice

Evidence of testator's mental condition, etc.

Trial court properly denied a granddaughter's motion for judgment notwithstanding the verdict following a jury verdict upholding the last will and testament

of her grandmother giving the bulk of her estate to her grandson because a videotape of the execution of the will, the will's witnesses, and other evidence established the grandmother's testamentary capacity. *Patterson-Fowlkes v. Chancey*, 291 Ga. 601, 732 S.E.2d 252 (2012).

53-4-12. Freedom of volition.

JUDICIAL DECISIONS

ANALYSIS

ESSENTIAL ELEMENTS OF UNDUE INFLUENCE

Essential Elements of Undue Influence

Undue influence is a question of fact requiring jury consideration.

Trial court properly denied the motions for a directed verdict and for a judgment notwithstanding the verdict filed by the executors of a will and trust because there was sufficient evidence to support the jury's finding that the documents were in-

valid as a product of undue influence based on the executors taking complete control of the elderly testator and isolating the testator from the testator's sons, as well as substituting desires and having the testator sign a new will and trust, which benefitted the executors and excluded the testator's wife and sons. *Davison v. Hines*, 291 Ga. 434, 729 S.E.2d 330 (2012).

ARTICLE 3

EXECUTION AND ATTESTATION

53-4-20. Required writing; signing; witnesses; codicil.

Editor's notes. — The general provisions concerning the competency of wit-

nesses, referred to in the Comment, are now found at O.C.G.A. § 24-6-601.

COMMENT

This section carries forward former OCGA Secs. 53-2-40 and 53-2-43, adding the concept from Georgia case law that a testator may sign by mark. Former OCGA Sec. 53-2-43(b) is clarified, stating that no other individual may sign a witness's

name to the will. (For general provisions as to the competency of witnesses, see OCGA Sec. 24-9-1 et seq.) This section also carries forward the concept from former OCGA Sec. 53-2-5 that a codicil must be executed with the same formality as a will.

53-4-22. Competency of witness.

Cross references. — Competency of witnesses generally, § 24-6-601 et seq. **Editor's notes.** — The general provisions concerning the competency of witnesses, referred to in the Comment, are now found at O.C.G.A. § 24-6-601.

COMMENT

Subsection (a) carries over the concept of competency of witnesses from former OCGA Sec. 53-2-45, adding that the witness to a will must be age 14 or over. (Case law indicates that an individual who is age 14 or over is presumed competent to witness a will.) The competency of witnesses is defined in OCGA Sec. 24-9-1 and Article 1 of Title 9 of the Code. Subsection (b) carries forward the concept of former OCGA Sec. 53-2-44 that the witness must be competent only at the time of attestation, not necessarily at the time of probate.

53-4-23. Testamentary gift to witness or witness's spouse.

Cross references. — Competency of witnesses generally, § 24-6-601 et seq.

ARTICLE 4

JOINT OR MUTUAL WILLS

53-4-30. Contract concerning succession.

JUDICIAL DECISIONS

No express written contract found. Decedent's son, grandson, and friend did not prove a written will contract meeting the requirements of O.C.G.A. § 53-4-30 because handwritten memorandum discovered after the decedent's death did not reflect the consideration the son, grandson, and friend described as part of the will contract and did not embody any promise on the decedent's part, but the notes simply stated the decedent's wishes as to the disposal of property and the handling of the estate; the signature is, in fact, a mandatory statutory requirement under O.C.G.A. § 53-4-30. *Newton v. Lawson*, 313 Ga. App. 29, 720 S.E.2d 353 (2011).

Decedent's son, grandson, and friend did not prove a written will contract meeting the requirements of O.C.G.A. § 53-4-30 because the decedent's 2000 will could not be relied upon to satisfy O.C.G.A. § 53-4-30 since it was not a written contract promising to make a will for valuable consideration and was revoked upon the decedent's execution of a will in 2004; the 2000 will was a revocable will reflecting the decedent's testamentary intent at the time the decedent executed the will, and the decedent changed the testamentary intent when the decedent executed the 2004 will. *Newton v. Lawson*, 313 Ga. App. 29, 720 S.E.2d 353 (2011).

53-4-31. Definitions.

JUDICIAL DECISIONS

ANALYSIS

MUTUAL WILLS

Mutual Wills

Joint and mutual will. — Trial court did not err when the court concluded that the will of a husband and wife was joint and mutual and that the husband and wife had an enforceable contract not to revoke that will because the husband and wife each agreed to give the other certain described real and personal property as valuable consideration if one or the other survived, and they also agreed that if they

died simultaneously, or at the survivor's death, that the residue of the estate would go to their four children, all of whom were biologically the husband's children and two of whom were biologically the wife's children; when the husband died the wife, as the survivor, benefitted from the joint and mutual will when she probated it as the husband's last will and testament and conveyed the husband's entire estate to herself. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

ARTICLE 6

CONSTRUCTION OF WILL; TESTAMENTARY GIFTS

53-4-64. Death of beneficiary before will executed or before death of testator.

Law reviews. — For note, "Vesting Title in a Murderer: Where is the Equity in the Georgia Supreme Court's Interpre-

tation of the Slayer Statute in *Levenson?*," see 45 Ga. L. Rev. 877 (2011).

CHAPTER 5

PROBATE

ARTICLE 3

SOLEMN FORM

53-5-20. Conclusiveness.

Cross references. — Subscribing witness's testimony, § 24-9-903.

53-5-21. Procedure.

Cross references. — Subscribing witness's testimony, § 24-9-903.

53-5-22. Notice.

Cross references. — Subscribing witness's testimony, § 24-9-903.

ARTICLE 5

FOREIGN AND OUT-OF-STATE WILLS; NONDOMICILIARIES

PART 1

GENERAL PROVISIONS

53-5-33. Requisites for admission to ancillary probate.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

53-5-35. Muniments of title to realty.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

PART 2

FOREIGN PERSONAL REPRESENTATIVES

53-5-43. Evidence of authority.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 6**ADMINISTRATORS AND PERSONAL
REPRESENTATIVES****ARTICLE 1****GENERAL PROVISIONS****53-6-2. Executor de son tort.****JUDICIAL DECISIONS**

Alteration of compensatory award after appeal. — Trial court erred when the court altered the award to the decedent's estate of compensatory damages, under O.C.G.A. § 53-6-2, after the executor's unsuccessful first appeal. In re Estate of Tapley, 312 Ga. App. 234, 718 S.E.2d 92 (2011).

CHAPTER 7**ADMINISTRATION OF ESTATES GENERALLY****ARTICLE 3****INVENTORY****53-7-30. Filing and contents.****JUDICIAL DECISIONS**

Exemption from filing inventory. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not unaccountable for injury based on the exemption. In re Estate of Willis, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

53-7-33. Power of testator to dispense with making inventory.**JUDICIAL DECISIONS**

Statute did not provide cause of action to creditor of the estate. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors

were not unaccountable for injury based on the exemption. In re Estate of Willis, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

ARTICLE 5

DISCHARGE AND RESIGNATION

53-7-50. Petition by personal representative for discharge; citation and publication; hearing; subsequently discovered estate.

JUDICIAL DECISIONS

Discharge vacated. — Probate court's order that discharged the administrator was vacated because a party in interest could file an objection to a petition for discharge and was entitled to a hearing thereon. Here, the administrator neither

listed the creditor with a disputed claim, nor did the administrator serve the creditor with notice of the administrator's petition for discharge. In re Estate of Johnston, 318 Ga. App. 324, 733 S.E.2d 856 (2012).

ARTICLE 6

SETTLEMENT OF ACCOUNTS

PART 2

ANNUAL RETURNS AND INTERMEDIATE REPORTS

53-7-69. Power of testator to dispense with necessity of return.

JUDICIAL DECISIONS

Statute did not provide cause of action to creditor of the estate. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file

such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not unaccountable for injury based on the exemption. In re Estate of Willis, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

CHAPTER 9

MISSING PERSONS AND PERSONS BELIEVED TO BE DEAD

ARTICLE 1

ADMINISTRATION OF ESTATE

53-9-1. Presumption or proof of death; presumption that missing person predeceased other deceased individual; perils or tragedies resulting in probable death.

Cross references. — Presumptions,
§ 24-14-20 et seq.

CHAPTER 11

PROCEEDINGS IN PROBATE COURT

53-11-11. Authentication or exemplification of document.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 12

TRUSTS

ARTICLE 1

GENERAL PROVISIONS

53-12-1. Short title; effect on existing trusts.

JUDICIAL DECISIONS

Retroactive application prohibited. — Rights of the decedent’s surviving spouse were already vested when the Revised Georgia Trust Code of 2010 (Revised Code), O.C.G.A. § 53-12-1 et seq., was enacted because under the terms of the amended trust agreement, the surviving spouse’s rights to the trust assets took effect upon the decedent’s death before the Revised Code took effect. Accordingly, any new obligation imposed by the Revised Code that would have impaired the sur-

viving spouse's right to possession could not be applied retroactively. *Rose v. Waldrip*, 316 Ga. App. 812, 730 S.E.2d 529

(2012), cert. denied, No. S12C1888, 2012 Ga. LEXIS 981 (Ga. 2012).

53-12-2. Definitions.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Rose v. Waldrip*, 316 Ga. App. 812, 730 S.E.2d 529 (2012), cert. denied,

No. S12C1888, 2012 Ga. LEXIS 981 (Ga. 2012).

53-12-6. Jurisdiction.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Davison v. Hines*, 291 Ga. 434, 729 S.E.2d 330 (2012).

ARTICLE 2

CREATION AND VALIDITY OF EXPRESS TRUSTS

53-12-20. Express trusts.

JUDICIAL DECISIONS

Cited in *Rector v. Bishop of the Episcopal Diocese of Ga., Inc.*, 290 Ga. 95, 718 S.E.2d 237 (2011); *Presbytery of Greater*

Atlanta, Inc. v. Timberridge Presbyterian Church, Inc., 290 Ga. 272, 719 S.E.2d 446 (2011).

53-12-25. Transfer of property to trust.

JUDICIAL DECISIONS

Wrongful death claim did not comprise the res of a technical trust. — Creditors' 11 U.S.C. § 523(a)(4) claim against a Chapter 13 debtor, their attorney, was dismissed because although the attorney failed to file a wrongful death complaint on the creditors' behalf and represented to the creditors that the attorney had, the creditors failed to allege a

contract or other agreement establishing a technical trust. The creditors' wrongful death cause of action did not comprise the res of a technical trust because under O.C.G.A. § 53-12-25 only property subject to transfer by the settler could become the subject matter of a trust, and under O.C.G.A. § 44-12-24 the creditors' wrongful death action was non-transferable.

Crisler v. Farr (In re *Farr*), No. 11-1009, 2011 Bankr. LEXIS 1875 (Bankr. M.D. Ga. May 18, 2011).

Retroactive application of statute prohibited. — Rights of the decedent's surviving spouse were already vested when the Revised Georgia Trust Code of 2010 (Revised Code), O.C.G.A. § 53-12-1 et seq., was enacted because under the terms of the amended trust agreement, the surviving spouse's rights to the trust assets took effect upon the decedent's

death before the Revised Code took effect. Accordingly, any new obligation imposed by the Revised Code that would have impaired the surviving spouse's right to possession could not be applied retroactively, and O.C.G.A. § 53-12-25 would have had no application to the trust if it, in fact, created such a new obligation. *Rose v. Waldrup*, 316 Ga. App. 812, 730 S.E.2d 529 (2012), cert. denied, No. S12C1888, 2012 Ga. LEXIS 981 (Ga. 2012).

ARTICLE 5

SPENDTHRIFT PROVISIONS AND CREDITORS' RIGHTS AND CLAIMS

53-12-80. Spendthrift provisions.

JUDICIAL DECISIONS

Relationship to bankruptcy. — In a case in which the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, the spendthrift trust exception to the anti-alienation provision in 11 U.S.C. § 541(c)(1)(A) did not apply be-

cause the campaign funds were not held in a spendthrift trust under Georgia law. There was no evidence of a writing creating an express trust, let alone an express trust containing a valid spendthrift provision as required under O.C.G.A. § 53-12-80. In re *Chambers*, 451 B.R. 621 (Bankr. N.D. Ga. 2011).

ARTICLE 7

IMPLIED TRUSTS

53-12-130. Resulting trusts.

JUDICIAL DECISIONS

Insufficient evidence of a resulting trust.

Best interest of creditors' test under 11 U.S.C. § 1325(a)(4) was not met by the proposed plan of Chapter 13 debtors because the plan did not account for the recoverable value of the debtor's transfer of the debtor's interest in property given to the debtor by the debtor's mother. A resulting trust under O.C.G.A.

§ 53-12-130(1) in favor of the mother was not created based on the nature of her transaction and the conduct of the parties, and a purchase money resulting trust under § 53-12-130(3) did not arise because the transfer from the mother to the brothers was made without consideration. *Meredith v. Weigl* (In re *Weigl*), No. 10-60341, 2011 Bankr. LEXIS 2246 (Bankr. S.D. Ga. Jan. 18, 2011).

53-12-132. Constructive trusts.

JUDICIAL DECISIONS

<p>Inordinate delay. Former wife was not entitled to impose a constructive trust on her former husband's military pension pursuant to O.C.G.A. § 53-12-132 because she failed to object to the absence of any provision</p>	<p>for the pension in their divorce decree for 12 years and failed to bring suit until five years after payments allegedly became due. <i>Davis v. Davis</i>, 310 Ga. App. 512, 713 S.E.2d 694 (2011).</p>
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ARTICLE 13

TRUSTEES' DUTIES AND POWERS

PART 2

TRUSTEES' POWERS

53-12-260. Discretionary powers.

<p>Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary</p>	<p>administration, see 64 Mercer L. Rev. 325 (2012).</p>
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ARTICLE 14

TRUSTEE LIABILITY

53-12-300. Accountable to beneficiary; breach of trust.

JUDICIAL DECISIONS

<p>Trustee properly found to have breached fiduciary duty. — It was not an abuse of discretion to deny a new trial motion brought by a trustee who was found to have breached the trustee's fiduciary duty to trust beneficiaries by making distributions to a co-trustee under a trust's encroachment provision because the trustee breached the trustee's duty to</p>	<p>protect the trust corpus as: (1) the trustee inconsistently required the co-trustee to provide supporting evidence for corpus distributions and let the co-trustee exceed an allotted budget; and (2) the beneficiaries were damaged by the resulting reduction in trust corpus. <i>Reliance Trust Co. v. Candler</i>, 315 Ga. App. 495, 726 S.E.2d 636 (2012).</p>
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53-12-301. Actions for breach of trust.**JUDICIAL DECISIONS****ANALYSIS****GENERAL CONSIDERATION****General Consideration**

University properly required to stay in suit. — Trial court properly denied a university's motion to dismiss for failure to state a claim in a breach of fiduciary suit because the trust trustee

had authorized the transfer of \$ 1 million from the trust to the university and such funds were subject to a constructive trust since the funds were held by the university. *Reinhardt Univ. v. Castleberry*, 318 Ga. App. 416, 734 S.E.2d 117 (2012).

53-12-302. Damages for breach of trust; interest.**JUDICIAL DECISIONS**

Interest. — It was not error to award trust beneficiaries interest from the date of encroachment for the trustee's breach of the trustee's fiduciary duty to the beneficiaries under a trust's encroachment provision by making distributions to a co-trustee because: (1) O.C.G.A.

§ 53-12-302(a)(1) and (3) said the trustee was liable for interest; and (2) under O.C.G.A. § 53-12-302(b), a trustee was liable for interest from the date of a breach. *Reliance Trust Co. v. Candler*, 315 Ga. App. 495, 726 S.E.2d 636 (2012).

53-12-307. Limitation of actions.**JUDICIAL DECISIONS****Cause of action not barred by statute of limitations.**

Beneficiaries' breach of fiduciary duty claim against the trustee of a family trust was time-barred because: (1) the statute began to run when the trustee entered into a loan transaction that allegedly harmed the trust; (2) the beneficiaries did not show the trustee withheld information

from the beneficiaries, deterred the beneficiaries from hiring the beneficiaries' own advisor to review the loan, or deterred the beneficiaries from timely filing suit; and (3) the beneficiaries raised no fact issue as to whether the beneficiaries used diligence to discover any fraud that would toll the statute. *Mayfield v. Heiman*, 317 Ga. App. 322, 730 S.E.2d 685 (2012).

